LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
FEB 21 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 653.

LAVERE REDFIELD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

GRUBIC, DRENDEL & BRADLEY,
304 Medico Dental Building,
130 North Virginia Street,
Reno, Nevada,

BURTON MARKS,
212 South Gale Drive,
Beverly Hills, California,

Attorneys for Petitioner.

TABLE OF AUTHORITIES CITED

Cases	Page
Rogers v. United States, 340 U. S. 367	4
Shelton v. United States, 205 F. 2d 806	3
Smith v. United States, 216 F. 2d 724	3
Smith v. United States, 234 F. 2d 385	1, 3
Vajtauer v. Commissioner of Immigration, 273 U. S. 103	4
United States v. Monia, 317 U. S. 424	4
United States v. Murdock, 284 U. S. 141	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 653.

LAVERE REDFIELD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

I.

The Government has cited one Circuit Court Case (*Smith v. United States*, 234 F. 2d 385 (C. A. 5th), brief page 6) for the proposition that petitioner's objections to the conduct of the trial court herein have been "emphatically" denied. The dissenting opinion of Judge Cameron at page 390 "emphatically" supports petitioner's contention of error. Judge Cameron stated as follows:

> "I agree with the statement of the majority that the Court below demonstrated patience in its effort to deal with one whose unreasoning and bellicose attitude made everything he did irritating and provocative. But the Trial Court did commit itself to be drawn unwittingly into what seems to

me to be serious errors. Those errors consisted in the repeated making of statements in the presence of the jury which tended to draw its attention to the fact that the appellant could be expected to take the stand in his own behalf. This episode may be used to illustrate what happened: One of the government investigators was on the stand and appellant was cross-examining him about the meaning of certain [documents]. . . ."

(Then the Trial Court stated to appellant).

"If you want the jury to consider what you have to say Mr. Smith, you ought to testify in the case. If you want your statements to be considered by the jury as evidence—as testimony and evidence, you ought to testify—take the witness stand and testify and be subject to cross-examination under the rules of evidence.

. . .

"For the Government's attorney and the Court to set upon appellant in this way was certainly prejudicial and unjustified.

"It is not sufficient answer to say that appellant had made it a practice throughout the examination of the witnesses to make statements of fact and to argue with the witness rather than confining himself to asking questions. In all of this, appellant showed an ignorance and naivete almost juvenile. At the same time, it was the duty of Government counsel and of the court to exhibit patience at every stage of the examination and to rule properly on objections and to refrain from saying anything from which the jury might infer

that it had a right to look forward to testimony from the lips of appellant. The attorney now representing appellant before us points out nineteen instances where references of a similar character were made. Of course, many of them were relatively harmless, but all of them tended to stress the idea expressed in the above quotation. It was not the province of the Court under the circumstances of this case to lecture the appellant repeatedly on a manner in which he should conduct his cross-examination. It seems to me that the Court could have avoided error by simply sustaining the objections as they were made. Few rights are more jealously guarded by the courts than the right of the defendant, exercised by appellant here, to fail to testify without having that failure commented on before the jury. C.F. 18 U. S. C. A. §3481 an dsee *Wilson v. United States*, 149 U. S. 60, 3 S. Ct. 765, 37 L. Ed. 650."

The cases of *Shelton v. United States*, 205 F. 2d 806, 810 (C. A. 5th) and *Smith v. United States*, 216 F. 2d 724, 727 (C. A. 5th) cited as being in accord with the majority opinion in *Smith v. United States*, 234 F. 2d 385 (C. A. 5th) are not in accord with said opinion. *Smith v. United States*, 216 F. 2d 724, 727 (C. A. 5th) does not even indirectly discuss the proposition for which the Government cites said case. The *Shelton* case, *supra*, fails to reflect any facts which specify the error of informing a jury that a defendant will, should or has a right to testify.

II.

The cases cited by the Government on page 8 of their brief, *Vajtauer v. Commissioner of Immigration*, 273 U. S. 103, 112-113; *Rogers v. United States*, 340 U. S. 367, 370-371; *United States v. Monia*, 317 U. S. 424; *United States v. Murdock*, 284 U. S. 141, 148, have no relation factually or otherwise to the objections raised in the Petition for Certiorari.

III.

The error denying petitioner his privilege against self-incrimination is so patent and egregious that the matter should be referred to this Honorable Court's Summary Calendar.

Respectfully submitted,

GRUBIC, DRENDEL & BRADLEY, and
BURTON MARKS,

By BURTON MARKS,

Attorneys for Petitioner.